

AMENDED IN ASSEMBLY AUGUST 25, 2015

AMENDED IN ASSEMBLY AUGUST 18, 2015

AMENDED IN ASSEMBLY JUNE 9, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 199

Introduced by Assembly Member Eggman
(Coauthors: Assembly Members Dahle, Hadley, Harper, Rendon,
Williams, and Wood)

January 29, 2015

An act to amend Sections 26003 and 26011.8 of the Public Resources Code, relating to alternative energy, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 199, as amended, Eggman. Alternative energy: recycled feedstock.

Existing law establishes the California Alternative Energy and Advanced Transportation Financing Authority to provide financial assistance for projects that promote the use of alternative energies. Existing law, until January 1, 2021, authorizes the authority to approve a project for financial assistance in the form of a sales and use tax exclusion. Existing law prohibits the authority from granting sales and use tax exclusions that exceed \$100,000,000 for each calendar year.

This bill would expand projects eligible for the sales and use tax exclusion to include projects that process or utilize recycled feedstock, but would not include a project that processes or utilizes recycled feedstock in a manner that constitutes disposal.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 26003 of the Public Resources Code, as
2 amended by Section 1 of Chapter 540 of the Statutes of 2013, is
3 amended to read:

4 26003. (a) As used in this division, unless the context
5 otherwise requires:

6 (1) (A) “Advanced manufacturing” means manufacturing
7 processes that improve existing or create entirely new materials,
8 products, and processes through the use of science, engineering,
9 or information technologies, high-precision tools and methods, a
10 high-performance workforce, and innovative business or
11 organizational models utilizing any of the following technology
12 areas:

13 (i) Microelectronics and nanoelectronics, including
14 semiconductors.

15 (ii) Advanced materials.

16 (iii) Integrated computational materials engineering.

17 (iv) Nanotechnology.

18 (v) Additive manufacturing.

19 (vi) Industrial biotechnology.

20 (B) “Advanced manufacturing” includes any of the following:

21 (i) Systems that result from substantive advancement, whether
22 incremental or breakthrough, beyond the current industry standard,
23 in the production of materials and products. These advancements
24 include improvements in manufacturing processes and systems
25 that are often referred to as “smart” or “intelligent” manufacturing
26 systems, which integrate computational predictability and
27 operational efficiency.

28 (ii) (I) Sustainable manufacturing systems and manufacturing
29 technologies that minimize the use of resources while maintaining
30 or improving cost and performance.

31 (II) Sustainable manufacturing systems and manufacturing
32 technologies do not include those required to be undertaken
33 pursuant to state or federal law or regulations, air district rules or

1 regulations, memoranda of understanding with a governmental
2 entity, or legally binding agreements or documents. The State Air
3 Resources Board shall advise the authority to ensure that the
4 requirements of this clause are met.

5 (2) (A) “Advanced transportation technologies” means
6 emerging commercially competitive transportation-related
7 technologies identified by the authority as capable of creating
8 long-term, high value-added jobs for Californians while enhancing
9 the state’s commitment to energy conservation, pollution and
10 greenhouse gas emissions reduction, and transportation efficiency.

11 (B) “Advanced transportation technologies” does not include
12 those projects required to be undertaken pursuant to state or federal
13 law or regulations, air district rules or regulations, memoranda of
14 understanding with a governmental entity, or legally binding
15 agreements or documents. The State Air Resources Board shall
16 advise the authority regarding projects that are excluded pursuant
17 to this subparagraph.

18 (3) (A) “Alternative sources” means devices or technologies
19 used for a renewable electrical generation facility, as defined in
20 paragraph (1) of subdivision (a) of Section 25741, a combined
21 heat and power system, as defined in Section 2840.2 of the Public
22 Utilities Code, distributed generation and energy storage
23 technologies eligible under the self-generation incentive program
24 pursuant to Section 379.6 of the Public Utilities Code, as
25 determined by the Public Utilities Commission, or a facility
26 designed for the production of renewable fuels, the efficient use
27 of which reduce the use of fossil or nuclear fuels, and energy
28 efficiency devices or technologies that reduce the need for new
29 electric generation and reduce emissions of toxic and criteria
30 pollutants and greenhouse gases.

31 (B) “Alternative sources” does not include a hydroelectric
32 facility that does not meet state laws pertaining to the control,
33 appropriation, use, and distribution of water, including, but not
34 limited to, the obtaining of applicable licenses and permits.

35 (4) “Authority” means the California Alternative Energy and
36 Advanced Transportation Financing Authority established pursuant
37 to Section 26004, and any board, commission, department, or
38 officer succeeding to the functions of the authority, or to which
39 the powers conferred upon the authority by this division shall be
40 given.

1 (5) “Cost” as applied to a project or portion of the project
2 financed under this division means all or part of the cost of
3 construction and acquisition of all lands, structures, real or personal
4 property or an interest in the real or personal property, rights,
5 rights-of-way, franchises, easements, and interests acquired or
6 used for a project; the cost of demolishing or removing any
7 buildings or structures on land so acquired, including the cost of
8 acquiring any lands to which those buildings or structures may be
9 moved; the cost of all machinery, equipment, and furnishings,
10 financing charges, interest prior to, during, and for a period after,
11 completion of construction as determined by the authority;
12 provisions for working capital; reserves for principal and interest
13 and for extensions, enlargements, additions, replacements,
14 renovations, and improvements; the cost of architectural,
15 engineering, financial, accounting, auditing and legal services,
16 plans, specifications, estimates, administrative expenses, and other
17 expenses necessary or incidental to determining the feasibility of
18 constructing any project or ~~incident~~ *incidental* to the construction,
19 acquisition, or financing of a project.

20 (6) “Financial assistance” includes, but is not limited to, loans,
21 loan loss reserves, interest rate reductions, proceeds of bonds issued
22 by the authority, bond insurance, loan guarantees or other credit
23 enhancements or liquidity facilities, contributions of money, or a
24 combination thereof, as determined by, and approved by the
25 resolution of, the board.

26 (7) (A) “Participating party” means a person, federal or state
27 agency, department, board, authority, or commission, state or
28 community college, or university, or a city or county, regional
29 agency, public district, school district, or other political entity
30 engaged in the business or operations in the state, whether
31 organized for profit or not for profit, that applies for financial
32 assistance from the authority for the purpose of implementing a
33 project.

34 (B) (i) For purposes of Section 6010.8 of the Revenue and
35 Taxation Code, “participating party” means an entity specified in
36 subparagraph (A) that seeks financial assistance pursuant to Section
37 26011.8.

38 (ii) For purposes of Section 6010.8 of the Revenue and Taxation
39 Code, an entity located outside of the state, including an entity
40 located overseas, is considered to be a participating party and is

1 eligible to apply for financial assistance pursuant to Section
2 26011.8 if the participating party commits to, and demonstrates
3 that, the party will be opening a manufacturing facility in the state.

4 (iii) It is the intent of the Legislature by adding clause (ii) to
5 clarify existing law and ensure that an out-of-state entity or
6 overseas entity is eligible to apply for financial assistance pursuant
7 to Section 26011.8.

8 (8) (A) “Project” means a land, building, improvement to the
9 land or building, rehabilitation, work, property, or structure, real
10 or personal, stationary or mobile, including, but not limited to,
11 machinery and equipment utilized in the state, whether or not in
12 existence or under construction, that utilizes, or is designed to
13 utilize, an alternative source, or that is utilized for the design,
14 technology transfer, manufacture, production, assembly,
15 distribution, or service of advanced transportation technologies or
16 alternative source components.

17 (B) “Project,” for purposes of Section 26011.8 and Section
18 6010.8 of the Revenue and Taxation Code, is defined in Section
19 26011.8.

20 (9) “Revenue” means all rents, receipts, purchase payments,
21 loan repayments, and all other income or receipts derived by the
22 authority from a project, or the sale, lease, or other disposition of
23 alternative source or advanced transportation technology facilities,
24 or the making of loans to finance alternative source or advanced
25 transportation technology facilities, and any income or revenue
26 derived from the investment of money in any fund or account of
27 the authority.

28 (b) This section shall become inoperative on July 1, 2016, and,
29 as of January 1, 2017, is repealed, unless a later enacted statute,
30 that becomes operative on or before January 1, 2017, deletes or
31 extends the dates on which it becomes inoperative and is repealed.

32 SEC. 2. Section 26003 of the Public Resources Code, as
33 amended by Section 2 of Chapter 540 of the Statutes of 2013, is
34 amended to read:

35 26003. (a) As used in this division, unless the context
36 otherwise requires:

37 (1) (A) “Advanced transportation technologies” means
38 emerging commercially competitive transportation-related
39 technologies identified by the authority as capable of creating
40 long-term, high value-added jobs for Californians while enhancing

1 the state's commitment to energy conservation, pollution and
2 greenhouse gas emissions reduction, and transportation efficiency.

3 (B) "Advanced transportation technologies" does not include
4 those projects required to be undertaken pursuant to state or federal
5 law or regulations, air district rules or regulations, memoranda of
6 understanding with a governmental entity, or legally binding
7 agreements or documents. The State Air Resources Board shall
8 advise the authority regarding projects that are excluded pursuant
9 to this subparagraph.

10 (2) (A) "Alternative sources" means devices or technologies
11 used for a renewable electrical generation facility, as defined in
12 paragraph (1) of subdivision (a) of Section 25741, a combined
13 heat and power system, as defined in Section 2840.2 of the Public
14 Utilities Code, distributed generation and energy storage
15 technologies eligible under the self-generation incentive program
16 pursuant to Section 379.6 of the Public Utilities Code, as
17 determined by the Public Utilities Commission, or a facility
18 designed for the production of renewable fuels, the efficient use
19 of which reduce the use of fossil or nuclear fuels, and energy
20 efficiency devices or technologies that reduce the need for new
21 electric generation and reduce emissions of toxic and criteria
22 pollutants and greenhouse gases.

23 (B) "Alternative sources" does not include a hydroelectric
24 facility that does not meet state laws pertaining to the control,
25 appropriation, use, and distribution of water, including, but not
26 limited to, the obtaining of applicable licenses and permits.

27 (3) "Authority" means the California Alternative Energy and
28 Advanced Transportation Financing Authority established pursuant
29 to Section 26004, and any board, commission, department, or
30 officer succeeding to the functions of the authority, or to which
31 the powers conferred upon the authority by this division shall be
32 given.

33 (4) "Cost" as applied to a project or portion of the project
34 financed under this division means all or part of the cost of
35 construction and acquisition of all lands, structures, real or personal
36 property or an interest in the real or personal property, rights,
37 rights-of-way, franchises, easements, and interests acquired or
38 used for a project; the cost of demolishing or removing any
39 buildings or structures on land so acquired, including the cost of
40 acquiring any lands to which those buildings or structures may be

1 moved; the cost of all machinery, equipment, and furnishings,
2 financing charges, interest prior to, during, and for a period after,
3 completion of construction as determined by the authority;
4 provisions for working capital; reserves for principal and interest
5 and for extensions, enlargements, additions, replacements,
6 renovations, and improvements; the cost of architectural,
7 engineering, financial, accounting, auditing and legal services,
8 plans, specifications, estimates, administrative expenses, and other
9 expenses necessary or incidental to determining the feasibility of
10 constructing any project or ~~incident~~ *incidental* to the construction,
11 acquisition, or financing of a project.

12 (5) “Financial assistance” includes, but is not limited to, loans,
13 loan loss reserves, interest rate reductions, proceeds of bonds issued
14 by the authority, bond insurance, loan guarantees or other credit
15 enhancements or liquidity facilities, contributions of money, or a
16 combination thereof, as determined by, and approved by the
17 resolution of, the board.

18 (6) (A) “Participating party” means a person, federal or state
19 agency, department, board, authority, or commission, state or
20 community college, or university, or a city or county, regional
21 agency, public district, school district, or other political entity
22 engaged in the business or operations in the state, whether
23 organized for profit or not for profit, that applies for financial
24 assistance from the authority for the purpose of implementing a
25 project.

26 (B) (i) For purposes of Section 6010.8 of the Revenue and
27 Taxation Code, “participating party” means an entity specified in
28 subparagraph (A) that seeks financial assistance pursuant to Section
29 26011.8.

30 (ii) For purposes of Section 6010.8 of the Revenue and Taxation
31 Code, an entity located outside of the state, including an entity
32 located overseas, is considered to be a participating party and is
33 eligible to apply for financial assistance pursuant to Section
34 26011.8 if the participating party commits to, and demonstrates
35 that, the party will be opening a manufacturing facility in the state.

36 (iii) It is the intent of the Legislature by adding clause (ii) to
37 clarify existing law and ensure that an out-of-state entity or
38 overseas entity is eligible to apply for financial assistance pursuant
39 to Section 26011.8.

(7) (A) “Project” means a land, building, improvement to the land or building, rehabilitation, work, property, or structure, real or personal, stationary or mobile, including, but not limited to, machinery and equipment utilized in the state, whether or not in existence or under construction, that utilizes, or is designed to utilize, an alternative source, or that is utilized for the design, technology transfer, manufacture, production, assembly, distribution, or service of advanced transportation technologies or alternative source components.

(B) “Project,” for purposes of Section 26011.8 and Section 6010.8 of the Revenue and Taxation Code, is defined in Section 26011.8.

(8) “Revenue” means all rents, receipts, purchase payments, loan repayments, and all other income or receipts derived by the authority from a project, or the sale, lease, or other disposition of alternative source or advanced transportation technology facilities, or the making of loans to finance alternative source or advanced transportation technology facilities, and any income or revenue derived from the investment of money in any fund or account of the authority.

(b) This section shall become operative on July 1, 2016.

SEC. 3. Section 26011.8 of the Public Resources Code, as amended by Section 3 of Chapter 540 of the Statutes of 2013, is amended to read:

26011.8. (a) The purpose of this section is to promote the creation of California-based manufacturing, California-based jobs, advanced manufacturing, the reduction of greenhouse gases, or reductions in air and water pollution or energy consumption. In furtherance of this purpose, the authority may approve a project for financial assistance in the form of the sales and use tax exclusion established in Section 6010.8 of the Revenue and Taxation Code.

(b) For purposes of this section, the following terms have the following meanings:

(1) “Project” means tangible personal property if at least 50 percent of its use is either to process recycled feedstock that is intended to be reused in the production of another product or using recycled feedstock in the production of another product or soil amendment, or tangible personal property that is used in the state for the design, manufacture, production, or assembly of advanced

1 manufacturing, advanced transportation technologies, or alternative
2 source products, components, or ~~systems~~. *systems, as defined in*
3 *Section 26003.* “Project” does not include tangible personal
4 property that processes or uses recycled feedstock in a manner that
5 would constitute disposal as defined in subdivision (b) of Section
6 40192.

7 (2) “Recycled feedstock” means materials that would otherwise
8 be destined for disposal, having completed their intended end use
9 and product lifecycle.

10 (3) ~~Soil~~ “Soil amendments” may include “compost,” as defined
11 in Section 14525 of the Food and Agricultural Code, “fertilizing
12 material,” as defined in Section 14533 of the Food and Agricultural
13 Code, “gypsum” or “phosphatic sulfate gypsum,” as those terms
14 are defined in Section 14537 of the Food and Agricultural Code,
15 or a substance distributed for the purpose of promoting plant
16 growth or improving the quality of crops by conditioning soils
17 through physical means.

18 (c) The authority shall publish notice of the availability of
19 project applications and deadlines for submission of project
20 applications to the authority.

21 (d) The authority shall evaluate project applications based upon
22 all of the following criteria:

23 (1) The extent to which the project develops manufacturing
24 facilities, or purchases equipment for manufacturing facilities,
25 located in California.

26 (2) The extent to which the anticipated benefit to the state from
27 the project equals or exceeds the projected benefit to the
28 participating party from the sales and use tax exclusion.

29 (3) The extent to which the project will create new, permanent
30 jobs in California.

31 (4) To the extent feasible, the extent to which the project, or the
32 product produced by the project, results in a reduction of
33 greenhouse gases, a reduction in air or water pollution, an increase
34 in energy efficiency, or a reduction in energy consumption, beyond
35 what is required by federal or state law or regulation.

36 (5) The extent of unemployment in the area in which the project
37 is proposed to be located.

38 (6) Any other factors the authority deems appropriate in
39 accordance with this section.

1 (e) At a duly noticed public hearing, the authority shall approve,
2 by resolution, project applications for financial assistance.

3 (f) Notwithstanding subdivision (j), and without regard to the
4 actual date of any transaction between a participating party and
5 the authority, any project approved by the authority by resolution
6 for the sales and use tax exclusion pursuant to Section 6010.8 of
7 the Revenue and Taxation Code before March 24, 2010, shall not
8 be subject to this section.

9 (g) The Legislative Analyst's Office shall report to the Joint
10 Legislative Budget Committee on the effectiveness of this program,
11 on or before January 1, 2019, by evaluating factors, including, but
12 not limited to, the following:

13 (1) The number of jobs created by the program in California.

14 (2) The number of businesses that have remained in California
15 or relocated to California as a result of this program.

16 (3) The amount of state and local revenue and economic activity
17 generated by the program.

18 (4) The types of advanced manufacturing, as defined in
19 paragraph (1) of subdivision (a) of Section 26003, utilized.

20 (5) The amount of reduction in greenhouse gases, air pollution,
21 water pollution, or energy consumption.

22 (h) The exclusions granted pursuant to Section 6010.8 of the
23 Revenue and Taxation Code for projects approved by the authority
24 pursuant to this section shall not exceed one hundred million dollars
25 (\$100,000,000) for each calendar year.

26 (i) (1) The authority shall study the efficacy and cost benefit
27 of the sales and use tax exemption as it relates to advanced
28 manufacturing projects. The study shall include the number of jobs
29 created, the costs of each job, and the annual salary of each job.
30 The study shall also consider a dynamic analysis of the economic
31 output to the state that would occur without the sales and use tax
32 exemption. Before January 1, 2017, the authority shall submit to
33 the Legislature, consistent with Section 9795 of the Government
34 Code, the result of the study.

35 (2) Before January 1, 2015, the authority shall, consistent with
36 Section 9795 of the Government Code, submit to the Legislature
37 an interim report on the efficacy of the program conducted pursuant
38 to this section. The study shall include recommendations on
39 program changes that would increase the program's efficacy in
40 creating permanent and temporary jobs, and whether eligibility

1 for the program should be extended or narrowed to other
2 manufacturing types. The authority may work with the Legislative
3 Analyst's Office in preparing the report and its recommendations.

4 (j) (1) Except as provided in paragraph (2), this section shall
5 become inoperative on July 1, 2016, and, as of January 1, 2017,
6 is repealed, unless a later enacted statute, that becomes operative
7 on or before January 1, 2017, deletes or extends the dates on which
8 it becomes inoperative and is repealed. The sale or purchase of
9 tangible personal property of a project approved before June 30,
10 2016, shall continue to be excluded from sales and use taxes
11 pursuant to Section 6010.8 of the Revenue and Taxation Code for
12 the period of time set forth in the authority's resolution approving
13 the project pursuant to this section.

14 (2) Notwithstanding paragraph (1), the authority's obligation
15 to submit to the Legislature a report pursuant to paragraph (2) of
16 subdivision (i) shall remain operative until the submission of the
17 report.

18 SEC. 4. Section 26011.8 of the Public Resources Code, as
19 amended by Section 4 of Chapter 540 of the Statutes of 2013, is
20 amended to read:

21 26011.8. (a) The purpose of this section is to promote the
22 creation of California-based manufacturing, California-based jobs,
23 the reduction of greenhouse gases, or reductions in air and water
24 pollution or energy consumption. In furtherance of this purpose,
25 the authority may approve a project for financial assistance in the
26 form of the sales and use tax exclusion established in Section
27 6010.8 of the Revenue and Taxation Code.

28 (b) For purposes of this section, the following terms have the
29 following meanings:

30 (1) "Project" means tangible personal property if at least 50
31 percent of its use is either to process recycled feedstock that is
32 intended to be reused in the production of another product or using
33 recycled feedstock in the production of another product or soil
34 amendment, or tangible personal property that is used in the state
35 for the design, manufacture, production, or assembly of advanced
36 transportation technologies or alternative source products,
37 components, or ~~systems~~. *systems, as defined in Section 26003.*
38 "Project" does not include tangible personal property that processes
39 or uses recycled feedstock in a manner that would constitute
40 disposal as defined in subdivision (b) of Section 40192.

(2) “Recycled feedstock” means materials that would otherwise be destined for disposal, having completed their intended end use and product lifecycle.

(3) ~~Soil~~ “*Soil* amendments” may include “compost,” as defined in Section 14525 of the Food and Agricultural Code, “fertilizing material,” as defined in Section 14533 of the Food and Agricultural Code, “gypsum” or “phosphatic sulfate gypsum,” as those terms are defined in Section 14537 of the Food and Agricultural Code, or a substance distributed for the purpose of promoting plant growth or improving the quality of crops by conditioning soils through physical means.

(c) The authority shall publish notice of the availability of project applications and deadlines for submission of project applications to the authority.

(d) The authority shall evaluate project applications based upon a net benefits test that includes all of the following criteria:

(1) The extent to which the project develops manufacturing facilities, or purchases equipment for manufacturing facilities, located in California.

(2) The extent to which the anticipated benefit to the state from the project equals or exceeds the projected benefit to the participating party from the sales and use tax exclusion.

(3) The extent to which the project will create new, permanent jobs in California.

(4) To the extent feasible, the extent to which the project, or the product produced by the project, results in a reduction of greenhouse gases, a reduction in air or water pollution, an increase in energy efficiency, or a reduction in energy consumption, beyond what is required by federal or state law or regulation.

(5) The extent of unemployment in the area in which the project is proposed to be located.

(6) Any other factors the authority deems appropriate in accordance with this section.

(e) At a duly noticed public hearing, the authority shall approve, by resolution, project applications for financial assistance.

(f) Notwithstanding subdivision (j), and without regard to the actual date of any transaction between a participating party and the authority, any project as defined in paragraph (7) of subdivision (a) of Section 26003 approved by the authority by resolution for the sales and use tax exclusion pursuant to Section 6010.8 of the

1 Revenue and Taxation Code before March 24, 2010, shall not be
2 subject to this section.

3 (g) The Legislative Analyst's Office shall report to the Joint
4 Legislative Budget Committee on the effectiveness of this program,
5 on or before January 1, 2019, by evaluating factors, including, but
6 not limited to, the following:

7 (1) The number of jobs created by the program in California.

8 (2) The number of businesses that have remained in California
9 or relocated to California as a result of this program.

10 (3) The amount of state and local revenue and economic activity
11 generated by the program.

12 (4) The amount of reduction in greenhouse gases, air pollution,
13 water pollution, or energy consumption.

14 (h) The exclusions granted pursuant to Section 6010.8 of the
15 Revenue and Taxation Code for projects approved by the authority
16 pursuant to this section shall not exceed one hundred million dollars
17 (\$100,000,000) for each calendar year.

18 (i) The authority shall make every effort to expedite the
19 operation of this section, and shall adopt regulations for purposes
20 of implementing the section as emergency regulations in
21 accordance with ~~Chapter the Administrative Procedure Act~~
22 (*Chapter 3.5* (commencing with Section 11340) of Part 1 of
23 Division 3 of Title 2 of the Government ~~Code. Code~~). For purposes
24 of that ~~Chapter 3.5, act~~, including Section 11349.6 of the
25 Government Code, the adoption of the regulations shall be
26 considered by the Office of Administrative Law to be necessary
27 for the immediate preservation of the public peace, health and
28 safety, and general welfare.

29 (j) This section shall become operative on July 1, 2016, and
30 shall remain in effect only until January 1, 2021, and as of that
31 date is repealed. The sale or purchase of tangible personal property
32 of a project approved before January 1, 2021, shall continue to be
33 excluded from sales and use taxes pursuant to Section 6010.8 of
34 the Revenue and Taxation Code for the period of time set forth in
35 the authority's resolution approving the project pursuant to this
36 section.

37 SEC. 5. This act is an urgency statute necessary for the
38 immediate preservation of the public peace, health, or safety within
39 the meaning of Article IV of the Constitution and shall go into
40 immediate effect. The facts constituting the necessity are:

- 1 In order to provide incentives for the development of projects
- 2 that process or utilize recycled feedstock for the protection of the
- 3 public health and environment, it is necessary for this act to take
- 4 effect immediately.

O